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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,324	12/10/1999	KENNETH J. KASHA	411044.9002	2350
26735	7590	10/23/2003		
QUARLES & BRADY LLP FIRSTAR PLAZA, ONE SOUTH PINCKNEY STREET P.O BOX 2113 SUITE 600 MADISON, WI 53701-2113			EXAMINER GRUNBERG, ANNE MARIE	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/460,324	KASHA ET AL.	
	Examiner	Art Unit	
	Anne Marie Grunberg	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-21, 26, 27 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-21, 26-27, 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claim 25 was canceled. Claims 1-21, 26-27, and 31-33 are pending.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

2. Claims 26-27 are newly rejected under 35 U.S.C. 112, second paragraph because they depend on canceled claim 25.

Claim Rejections - 35 USC § 103

3. Claims 1-14, 18-21 and 31-33 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Genovesi et al. in view of Kreuger et al (EP 0 455 597).

Applicant argues that there art is not analogous and if so that there is no motivation to combine the two references. Kreuger pertains to dicot somatic embryogenesis whereas Genovesi relates to monocot androgenesis. Additionally, Applicant argues that in the prior art, the level of uninucleate microspores can only be achieved using colchicine. Applicants further argue that the claimed temperature range of 3-6°C provides an unexpected benefit.

These arguments have been carefully considered but are not considered persuasive for the following reasons:

Genovesi et al teach a method of producing an embryo (column 8, lines 6-9, 24-25, 43, 52, for example) and Kreuger et al teach induction of embryogenesis (column 3, lines 14-18, for example). Thus they are analogous.

Applicant does not contain a limitation to only dicots or monocots. There are many similarities to tissue culture of monocots and dicots that are well known in the art. For example, both can use MS medium. Thus they are analogous.

Applicant argues a limitation that does not exist in the claims. Specifically Applicant argues that the prior art requires colchicine whereas Applicants' invention does not require colchicine. However, this limitation is not found in the claims. The term "comprising" is open-ended claim language.

Finally, the temperature ranges overlap.

4. Claims 13-17 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hu et al in view of Kreuger et al (EP 0 455 597) and Genovesi et al for the same reasons as stated above.

No claim is allowed.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grunberg whose telephone number is (703) 305-0805. The examiner can normally be reached Monday through Friday from 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax phone number for this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


ANNE MARIE GRUNBERG
PATENT EXAMINER